

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 WYNN RESORTS, LIMITED,

11 Plaintiff,

12 v.

13 ATLANTIC-PACIFIC CAPITAL, INC.,

14 Defendant.
15

Case No. 2:10-CV-00722-KJD-LRL

ORDER

16 Presently before the Court is Defendant Atlantic-Pacific Capital, Inc.’s Motion for Stay of
17 Action Pending Appeal (#37). Plaintiff filed a response in opposition (#46) to which Defendant
18 Atlantic-Pacific Capital (“APC”) replied (#48). Also before the Court is Plaintiff’s Motion to Enter
19 Default (#44). Since the Court granted (#47) Defendant’s Motion to Extend Time (#43), the motion
20 to enter default is denied as moot.

21 The Federal Arbitration Act (“FAA”) allows a party to immediately appeal an order denying a
22 motion to compel arbitration. See 9 U.S.C. § 16(a). During the pendency of the appeal, district
23 courts retain jurisdiction over the litigation and have discretion to enter a stay of the judicial
24 proceedings pending an appeal. Britton v. Co-op Banking Group, 916 F.2d 1405, 1412 (9th Cir.
25 1990). Courts generally consider the following four factors on an application for stay: (1) whether
26 the moving party is likely to succeed on the merits; (2) whether the moving party will be irreparably

1 injured absent a stay; (3) whether issuing a stay will substantially injure the other parties interested in
2 the proceedings; and (4) consideration of where the public interest lies. See Golden Gate Rest. Ass'n
3 v. City and Cnty. of San Francisco, 512 F.3d 1112, 1115 (9th Cir. 2008).

4 Having considered the Golden Gate factors, the Court finds that a stay pending appeal should
5 be issued. The Court finds that serious legal questions going to the merits of the appeal have been
6 raised. See Alliance for Wild Rockies v. Cottrell, 632 F.3d 1132 (9th Cir. 2011). Further, APC may
7 be irreparably injured if a stay is not granted and Wynn will not be harmed by the issuance of a stay,
8 especially considering that it did not object to the magistrate judge's order (#47) granting the
9 extension of time which made Wynn's motion for entry of default moot. Finally, the public interest
10 favors the granting of the stay, because public policy favors arbitration over litigation. If APC
11 prevails on appeal, then all litigation conducted during the pendency of the appeal will be wasted
12 resources.

13 Accordingly, IT IS HEREBY ORDERED that Defendant Atlantic-Pacific Capital, Inc.'s
14 Motion for Stay of Action Pending Appeal (#37) is **GRANTED**;

15 IT IS FURTHER ORDERED that Plaintiff's Motion to Enter Default (#44) is **DENIED as**
16 **moot**.

17 DATED this 10th day of October 2011.

18
19
20 

21 Kent J. Dawson
22 United States District Judge
23
24
25
26